

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

Hari Singh

Vs.

State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.4048/2005

DATE OF ORDER

::

May 30, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Kuldeep Mathur, for the petitioner.

Mr.N.M.Lodha, Addl.Advocate General for respondents No.1 & 3.

Mr.J.P.Joshi, for respondent No.2.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks to declare the proviso to Rule 266(3) of the Rules of Rajasthan Panchayati Raj Rules, 1996 (for short 'the Rules of 1996' hereinafter) unconstitutional and ultra vires.

I have heard learned counsel for the parties.

Rule 266(3) of the Rules of 1996 reads as under:-

"266 (3).- Primary and upper primary school teacher (100% by direct recruitment.- Senior Secondary under new (10+2) scheme of Higher Secondary under old scheme from Rajasthan Board of Secondary Education or equivalent and Secondary School certificate from Rajasthan Board of Secondary Education or equivalent with 5 subjects, 3 of them be mathematics, English and Hindi with BSTC/B.Ed.

(ii)BSTC/B.Ed.]

Provided that for appointment of widow and divorce woman on the post of teacher, required qualification of BSTC/B.Ed., shall be relaxed, if they are competent otherwise and they submit a bond to the effect that they will obtain the qualification of BSTC/B.Ed., within a period of three years. They shall be entitled to receive leave for study to get BSTC/B.Ed. qualification soon after their appointment.

Provided further that the person who has appeared in the B.Ed/B.S.T.C. Examination shall be eligible to apply for the post of primary and upper primary school teacher but he shall have to submit proof of having acquired the said educational qualification to the Rajasthan Public Service Commission before the declaration of result of the said examination."

The proviso to Rule 266(3) of Rules of 1996 in clear terms provides that the candidate, who has appeared in the B.Ed./B.S.T.C. Examination shall be eligible to apply for the post of primary and upper primary school teacher but he shall have to submit proof of having acquired the said educational

qualification to the Rajasthan Public Service Commission before the declaration of result of the said examination. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for submission of the application form unless there is an express provision to the contrary. In the instant case, the last date for submission of application form was 16-12-2006. Admittedly, the petitioner did not possess the requisite qualification on the last date of submission of the application form. However, in view of proviso 2nd to Rule 266 of the Rules of 1996, the petitioner's application was accepted by the respondent RPSC, though he did not possess the eligibility qualification making it clear to the petitioner that the petitioner shall submit the proof of having acquired the said educational qualification to the respondent RPSC before the declaration of the result of the said examination. Admittedly, the petitioner did not possess the requisite qualification even on the date of declaration of the result. The petitioner applied for the said post taking advantage of 2nd proviso to Rule 266(3) of the Rules of 1996 and now it is not open for him to say that the Rule is unconstitutional. Had the 2nd proviso to Rule 266(3) of the Rules of 1996 been not inserted in the statute, the petitioner would not at all be even eligible to apply.

In this view of the matter, in my view, the petition has no force and the same is, therefore, dismissed. Stay petition also stands dismissed.

[H.R.PANWAR],J.

m.asif/-